

Mrs. Cunningham
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HEADQUARTERS EIGHTH ARMY
United States Army
Office of the Staff Judge Advocate

Our #156

Yokohama, Japan
16 June 1948

UNITED STATES OF AMERICA VS YOSHIYUKI INOUE
UNITED STATES OF AMERICA VS TAKAJI OKADA

Review of the Staff Judge Advocate

1. The attached record of trial by common trial of Yoshiyuki Inoue and Takaji Okada, at Yokohama, Japan, from 19 February 1948 to 2 March 1948, by a Military Commission appointed by paragraph 32, Special Orders No. 53, Headquarters Eighth Army, United States Army, dated 11 February 1948, having been referred to the Staff Judge Advocate, this review is submitted to the Commanding General.

Personal Data Concerning Accused

NAME: Yoshiyuki Inoue
AGE: 34
RESIDENCE: Hiroshima-ken, Kure-shi, Hondo, 15-chome 86
MARITAL STATUS: Married
RELATIVES: Mother
EDUCATION: 12 years' schooling
VOCATION: Draftsman
MILITARY CAREER: 2 yrs, 10 mos Japanese Army

DATE OF CONFINEMENT: 20 Nov 1945
DATE OF ARRAIGNMENT: 19 Feb 1948
PLACE OF TRIAL: Yokohama, Japan
PERIOD OF TRIAL: 19 Feb 1948 to 2 March 1948
DATE OF SENTENCE: 2 Mar 1948
SENTENCE: CHL for eight (8) yrs
CLEMENCY RECOMMENDED BY COMMISSION: No

NAME: Takaji Okada
AGE: 35
RESIDENCE: Kobe-shi, Nada-ku, Shinohara, Kita-machi, 2-chome 32
MARITAL STATUS: Married
RELATIVES: Mother, brother, sister
EDUCATION: 16 years' schooling
VOCATION: Bank clerk
MILITARY CAREER: 6 yrs, Japanese Army

DATE OF CONFINEMENT: 2 Jan 1946
DATE OF ARRAIGNMENT: 19 Feb 1948
PLACE OF TRIAL: Yokohama, Japan
PERIOD OF TRIAL: 19 Feb 1948 to 2 Mar 1948
DATE OF SENTENCE: 2 Mar 1948
SENTENCE: CHL for four (4) yrs
CLEMENCY RECOMMENDED BY COMMISSION: No

2. Synopsis of Charges, Pleas, Findings, Legal Sufficiency and Sentence:

<u>Charge and Specifications:</u>	<u>Pleas</u>	<u>Findings</u>	<u>Legally Sustained</u>
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INOUE

Ch: Accused, at the times and places set forth in the specifications and during a time of war between the United States and Japan, did violate the Laws and Customs of War.

G

Yes

Sp 1: On or about 14 December 1944, at or near Fukuoka POW Camp No. 2, formerly known as No. 7 Branch Camp, Ube, Honshu, Japan, accused did

except the words "thereby causing his death"; of the excepted words, PG.

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willfully and unlawfully mistreat Gunner Gavin Marshal, a British PW, then and there in an ill and debilitated condition by ordering and forcing said Marshal to perform hard and arduous labor, thereby causing his death (as amended, R. 3, 16).

Sp 2: In or about April 1943, at or near Fukuoka POW Camp No. 2, accused did willfully and unlawfully mistreat and abuse Gunner Leonard Baker and Sgt. Eric James Oscar Burgess, British PWs, by failing and refusing to provide adequate and proper food for them when they were in an ill and debilitated physical condition.

NG G, No
except the words "in or about APRIL 1943", substituting therefor the words "between April 1943 and October 1944", and except the words "failing and refusing to provide adequate and proper food" substituting therefor the words "withholding food intended"; of the excepted words, NG; of the substituted words, G.

Sp 3: In or about April 1943, at or near Fukuoka POW Camp No. 2, accused did willfully and unlawfully mistreat and abuse Gunner John W. Chapman, a British PW, by failing to provide adequate and proper food for him when he was in an ill and debilitated physical condition and by forcing the said John William Chapman to work at arduous labor when he was physically unfit to do so.

NG G, No
except the words "in or about April 1943", substituting the words "between April 1943 and October 1944", and except the words "failing to provide adequate and proper food", substituting therefor the words "withholding food intended"; of the excepted words, NG; of the substituted words, G.

Sp 4: On or about 24 December 1943, at or near Fukuoka POW Camp No. 2, accused did willfully and unlawfully mistreat and abuse Gunner Cyril Raymond Cowell and Gunner Harry George Deebank, British PWs, by forcing them to ~~parade~~ exercise and work at arduous labor when they were in an ill, unfit physical condition to do so.

NG G Yes
in part

Sp 5: Between November 1942 and March 1945; at or near Fukuoka POW Camp No. 2, accused did willfully and unlawfully misappropriate, withhold and fail to issue Red Cross supplies intended for the use and benefit of American and Allied PWs.

NG G, Yes
except the words "withhold and fail to issue"; of the excepted words, NG.

Sp 6: Between November 1943 and March 1945; at or near Fukuoka POW Camp No. 2, accused did willfully and unlawfully mistreat numerous Allied PWs, other than as hereinabove specified, by depriving them of adequate food, medicines and other supplies, by refusing to provide them with proper medical treatment, by forcing them to perform arduous labor when they were physically unfit to do so, by beating them and by otherwise abusing them.

NG G, Yes
in part
except the words "by depriving them of adequate food, medicines and other supplies"; of the excepted words, NG.

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Additional Sp 1: In or about Decem- NC
ber 1943, at or near Fukuoka POW
Camp No. 2, accused did willfully
and unlawfully mistreat Driver
Michael Gerard McGonnell, a British
PW, and numerous other Allied PWs
by beating and otherwise abusing
them.

G

No

OKADA:

Ch: Accused, at the times and places NC
set forth in the specifications here-
to attached, and during a time of war
between the United States and Japan,
did violate the Laws and Customs of
War.

G

Yes

Sp 1: Between 1 November 1942 and
31 March 1945, at or near Fukuoka POW
Camp No. 5, formerly known as No.
10 Branch Camp, Ube, Honshu, Japan,
accused did unlawfully disregard and
fail to discharge his duty as Com-
mander of said Camp by failing to
provide Allied PWs thereat confined
with adequate and proper food, cloth-
ing, medicines, medical supplies and
medical treatment, thereby resulting
in the malnutrition and sickness of
said PWs.

NC

G,

No

except the words "food, malnu-
trition and"; of the excepted
words, NC.

Sp 2: Between 1 November 1942 and
31 March 1945, at or near Fukuoka
POW Camp No. 5, accused, then Com-
mander of said Camp, did willfully
and unlawfully misappropriate, with-
hold and fail to issue Red Cross
food, clothing and medical supplies
intended for the use and benefit of
American and Allied PWs.

NC

G,

Yes

except the words "withhold and
fail to issue" and the words
"clothing and medical supplies",
substituting therefor the words
"and did withhold clothing"; of
the excepted words, NC; of the
substituted words, G.

Sp 3: Between 1 November 1942 and
and 31 March 1945, at or near Fukuoka
POW Camp No. 5, accused did unlaw-
fully disregard and fail to dis-
charge his duty as Commander of said
Camp by failing to control and res-
train members of his command and per-
sons under his supervision and con-
trol, by permitting them to commit
the following acts of abuse, mis-
treatment and other offenses against
Allied PWs:

a. On or about 19 September 1943,
the unlawful mistreatment and abuse
by Sgt. Kobuyuki Hanada of Lt. Robin
A. Charles, a British PW, by beating
him and by confining him in the
guardhouse for a long period of time.

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G,

Yes

except the words "for a long
period of time"; of the excepted
words, NC.

b. In or about May 1944, the un-
lawful mistreatment of Lance Cpl.
Ernest Fisher, a British PW, by
beating and otherwise abusing him.

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- c. On or about 30 March 1943, the unlawful mistreatment by Sgt. Nobuyuki Hanada of one Captain Kimber, a British PW, by beating and otherwise abusing him. G Yes
- d. On or about 1 August 1944, the unlawful mistreatment of one Petty Officer Dirks, a British PW, by beating and otherwise abusing him. NG ---
- e. In or about July 1944, the unlawful mistreatment by Sgt. Masaru Matsumoto of Capt. Virgil Jackson Dorset, an American PW, Capt. J. V. Klerks, a Dutch PW, and Pfc Harmon A. Husley, an American PW, by beating and otherwise abusing them. NG G Yes
- f. In or about July 1944, the unlawful mistreatment by Sgt. Masaru Matsumoto of Pfc John Mayfield, an American PW, by beating and otherwise abusing him and by unlawfully confining him in jail for a long period of time. NG G, Yes except the words "and by unlawfully confining him in jail for a long period of time"; of the excepted words, NG.
- g. In or about November 1943, the unlawful mistreatment and abuse by one Sgt. Tanaguchi of Gunner William Lewis, a British PW, by beating him and by forcing him to work at arduous labor, when he was in an ill and physically unfit condition to perform such labor. NG G Yes in part
- h. In or about March 1943; the unlawful mistreatment by Sgt. Nobuyuki Hanada of Lanch Sgt. A. Bradsworth, Sgt. H. Greenbank, Sgt. A.R. Longstaff and Sgt. J.C. Stainsley, British PWs, by beating and otherwise abusing them. NG G Yes
- i. On or about February 1945, the unlawful mistreatment and abuse of Driver Charles Vincent Nairne and Mess Orderly Charles Frederick Por-doe, British PWs, by beating them when they were in an ill, unfit and debilitated physical condition. NG G, Yes in part except the words "when they were in an ill"; substituting there- for the words "when being in an"; and except the words "and debilitated"; of the excepted words, NG; of the substituted words, G.
- j. Between November 1942 and March 1943, the unlawful mistreatment of numerous Allied PWs, other than as hereinabove specified, by beating and otherwise abusing them. NG G Yes
- Sp 4: Between 1 September 1943 and 31 July 1944, at or near Fukuoka POW Camp No. 2, formerly known as No. 7 Branch Camp, Ube, Honshu, Japan, accused did unlawfully disregard NG G, Yes except the words "food, clothing, medicines, medical supplies and" and the words "malnutrition and"; of the excepted words, NG.

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and fail to discharge his duty as Commander of said Camp by failing to provide Allied PWs thereat confined with adequate and proper food, clothing, medicines, medical supplies and medical treatment, thereby resulting in the malnutrition and sickness of said PWs.

Sp 5: Between 1 September 1943 and 31 July 1944, at or near Fukuoka POW Camp No. 2, accused, then Commander of said Camp, did willfully and unlawfully misappropriate, withhold and fail to issue Red Cross food, clothing and medical supplies intended for the use and benefit of American and Allied PWs.

VG G, Yes
except the words "withhold and fail to issue" and the words "clothing and medical supplies";
of the excepted words, NC.

Sp 6: Between 1 September 1943 and 31 July 1944, at or near Fukuoka POW Camp No. 2, accused did unlawfully disregard and fail to discharge his duty as Commander of said Camp by failing to control and restrain members of his command and persons under his supervision and control by permitting them to commit the following acts of mistreatment and other offenses against numerous American and Allied PWs:

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a. On or about 24 December 1943, the unlawful abuse and mistreatment by Yoshiyuki Inoue of Gunner Cyril Raymond Cowell and Gunner Harry George Deebank, British PWs, by forcing them to parade, exercise and work at arduous labor when they were in an ill, unfit physical condition to do so.

NC

G

Yes
in part

b. In or about April 1943, the unlawful mistreatment by Yoshiyuki Inoue of Gunner John W. Chapman, a British PW, by failing to provide adequate and proper food for him when he was in an ill and debilitated physical condition and by forcing the said John William Chapman to work at arduous labor when he was physically unfit to do so.

NC

NC

c. In or about April 1943, the unlawful mistreatment and abuse by Yoshiyuki Inoue of Gunner Leonard Baker and Sgt. Eric James Oscar Durgess, British PWs, by failing and refusing to provide adequate and proper food for them when they were in an ill and debilitated physical condition.

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d. Between 1 September 1943 and 1 July 1944, the unlawful mistreatment of numerous Allied PWs, other than as hereinabove specified, by beating and otherwise abusing them.

Yes
in part
G,
except the words "1 July 1944",
substituting therefor the words
"20 July 1944"; of the excepted
words, NG; of the substituted
words, G.

Additional Sp 1: Between 1 September 1943 and 31 July 1944, at or near Fukuoka POW Camp No. 2, accused did unlawfully disregard and fail to discharge his duty as Commander of said Camp by failing to control and restrain members of his command and persons under his supervision and control by permitting them to commit the following acts of mistreatment and other offenses against numerous American and Allied PWs:

a. In or about December 1943, the unlawful mistreatment by Yoshiyuki Inoue of Driver Michael Gerard McConnell, a British PW, and numerous other Allied PWs by beating and otherwise abusing them.

NG

G

NO

b. Between 1 September 1943 and 31 July 1944, the unlawful mistreatment of numerous Allied PWs, other than as hereinabove specified, by beating and otherwise abusing them.

NG

Molle Prosequi

3. Summary of the Evidence:

a. For the Prosecution:

(1) The accused Inoue was a civilian guard at PW Camp No. 2 from 1 February 1943 (R. 59) until the end of the war (R. 68). He was identified by his own name, and by the nickname of "Wingy" and "One Arm" (R. 19). The accused Okada was the commanding officer of PW Camp 2 from September 1943 to July 1944 and of PW Camp 5 from 27 November 1942 to 10 March 1945 (R. 79). The accused Okada identified himself while on the stand (R. 78).

OKADA

(2) The accused was found not guilty of Specifications 3d, 6b and 6c (R. 145, 146).

(3) As to Specification 1: At the start (25 Nov 1942) the food was fair, but it got worse and then became terrible, consisting of never more than rice, watery soup, and fish once in a while. For lunch only one pound of rice allotted per man while working in the mine. Few clothes were issued for work in the mine and the shoes consisted of either canvas and rubber or straw sandals, which in either case, wore out quickly. Many men had to work in their bare feet (Ex. 5). The clothing supplied to the PWs was Jap Army uniforms and overcoats, but no underclothing. Food consisted of two bowls of rice, three bowls of cabbage soup per day, once a month fish--affiant lost 30 lbs. in not quite three years (Ex. 1). "Food very poor and quantity small. Medical attention practically nil; clothing fair"

(p 6, INOUE, Case #102)

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(Ex. 9). The general conditions in the camp were fair (Ex. 20): Food was of the type usually supplied to Japanese workers--rice, vegetable stew, occasional meat and fish, three meals a day, unbalanced diet, insufficient in quantity, clothing was supplied by the Japanese army and was inadequate, Japanese army uniforms for winter wear (Ex. 20). A Maj. Allpass, the senior British officer in the camp, stated that the clothing supplied by the coal company for each PW included:

- 1 pair trousers and jacket (wear in camp)
- 4 hand towels
- 4 loin clothes
- 3 pair cotton socks
- 1 cotton suit (shirt and shorts))
- 1 pair rubber boots) wear in mine

Rubber boots were replaced as required until the last nine months when supplies became short, and finally stopped.

By the Japanese Army:

- 1 Jap army tunic and trousers)
- 1 greatcoat) winter only
- 1 side hat
- 1 pair cotton socks

No shirts or underclothing, although they were held in the store in camp. Food was of fair quality and clean--2/3 rice and 1/3 bread plus vegetables. During the last eleven months whole soya beans included in the rice; for the first six months some fish, meat, fat--then the amount of protein declined. Sick were on a reduced diet.

"Medical treatment was by a Japanese Doctor who visited the camp daily--and later by PW Doctors also--no Red Cross supplies available--Jap Doctor got some medicines from the Coal Company--Japanese would not allow PWs to be treated at the Company hospitals--after operation PW would be returned to the camp infirmary--Requested whole soya beans in diet--added 11 months later." (Dr. Klerks). Food ration far below customary ration in England--especially in meat and fats. The Japanese Doctor supplied minimal amounts of Japanese medicines, surgical instruments, and bandages. Major surgery, x-ray and dental care made available at local hospital. Japanese Doctor sincere and co-operative, Japanese army personnel did not agree on rest for the sick. Red Cross medical supplies were under the care of a Japanese orderly who made it difficult at times to obtain the medicine for use. All deaths except one can be attributed to the voyage from China to Japan; the other death due to a mine accident (Dr. Donit). During the month of April 1944 meat was provided the PWs four times (Ex. 35).

(4) As to Specification 2: The affiant states, "I have personally seen...Lieutenant Takasi Okada...eating the contents of Red Cross parcels stolen by them." (Ex. 29). 11 February 1944 fifteen Red Cross greatcoats received and issued to the PWs; ten bales Red Cross clothing received same day, issued (except pullovers, issued 8 Nov. 1944) 13 April 1944; 48 pairs Red Cross boots received 30 April 1944 issued 21 November 1944; 20 Red Cross greatcoats and 3 bales Red Cross clothing received 26 January 1945 issued same day. Repeated applications were made for the clothing received 11 Feb. 1944 but issuance delayed until April 1944 (Ex. 35).

(5) As to Specification 3a: PW Charles was in charge of some rabbits during October 1943; some died through no fault of his. Charles was hit by Sgt. Hanada and placed in solitary confinement for five days (Ex. 2). Corroborated (Ex. 29).

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(6) As to Specification 3b: PW Fisher in May 1944 was sent to the guardhouse where three Japanese guards beat and kicked him until he became unconscious; he suffered no permanent injury; Okada was notified of the incident but said Fisher had disobeyed orders (Ex. 1). Corroborated in all or part (Ex. 10, 29, 35).

(7) As to Specification 3c: In the spring of 1943 Sgt. Hanada was inspecting PW winter clothing as it was turned in and he beat and kicked PW Kimber; no apparent permanent injury (Ex. 27, 29).

(8) As to Specification 3d: A finding of Not Guilty.

(9) As to Specifications 3e and 3f: In July 1944 PW Mayfield, a medical orderly, was called to the camp office by Sgt. Matsumoto, who beat him with clenched fists until Mayfield was insensible. PW Doctors Dorset and Klerks then protested and were struck by Matsumoto; then the rest of the men in the infirmary were called in (Hulse, Bunk and Pardoe) struck a few times and then all the PWs were made to kneel on both knees on the cement floor for about 2½ hours (Ex. 1, 29). PW Dorset says the incident took place in February 1945 (Ex. 13).

(10) As to Specification 3g: PW Lewis was ill and reported to Sgt. Tanaguchi in November 1943. Tanaguchi beat Lewis and sent him to work in the mines the following day. PW Doctor Klerks had advised Lewis to report sick; Lewis had heart trouble and after working in the mines a few more days, died in the hospital (Ex. 14, 5).

(11) As to Specification 3h: In March 1943 Sgt. Hanada entered the PW mess hall and shouted something in Japanese; no one understood. He then approached a table where Sgts. Longstaff, Greenbank, Bradsworth, States and one other Sgt. were sitting, and struck each man three times in the face with his clenched fist; no permanent injuries. The PW CO wrote a letter to Okada who took no action (Ex. 1). To the same effect except the date was May 1943, substituting the name Morley for the unnamed Sgt. and "Stainsby" for "States" (Ex. 29).

(12) As to Specification 3i: PW Nairne states that in February 1945 he was in the hospital with a broken leg; medical orderly Pardoe got some paper and a pencil for Nairne to do some sketching, which was against orders. A Japanese Sgt. called the "Sailor" slapped Nairne in the face and struck him about the head with his fists trying to make Nairne tell who gave him the paper and pencil. Pardoe stopped him and told the "Sailor" that he gave the paper to Nairne. No permanent injury to Nairne (Ex. 20). PW Purdy adds that the beating was with a stick and that Pardoe and Mayfield were slapped (Ex. 5). Pardoe confirms the beating of Nairne but does not mention that he was struck (Ex. 26).

(13) As to Specification 3j: See paragraph 3a(9) above. About July 1943 ten sick patients were in the hospital including PWs Taylor and Butler, who were beaten and kicked and forced to do physical training and to run several times about the camp (Ex. 28). In July all the PWs in one room were made to slap each other because one had failed to change his "tally" indicating where he was (Ex. 29). PW Munford was forced to work in the mine while he had a hernia (Ex. 10). In January 1943 affiant and ten other PWs were beaten by Sgt. Hanada with a stick; all bruised and some blood; after being beaten all eleven put for five days in two small cells where there was not enough room to lie down (Ex. 5).

(14) As to Specification 4: See paragraph 3a(24) post.

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(15) As to Specification 5: The accused Okada and his staff misappropriated about 70% of the Red Cross food supplies consigned to the camp for the PW Christmas of 1943 (Ex. 17, p 7).

(16) As to Specification 6a: See paragraph 3a(32) post.

(17) As to Specification 6d: See paragraph 3a(24)(Inoue) post. Guard Commander Miahama struck PW Robenson in the face with a rifle butt on 31 May 1944 (Ex. 17, p 11).

(18) As to added Specification 1a: See paragraph 3a(9) (Inoue) post.

INOUE

(19) As to Specification 1: PW Marshall arrived in the camp in December 1944 in an ill condition and was classified for work other than the mine by the Japanese Doctor; he was punished with 10 days in the guardhouse on 24 December 1944; on his release he was in a state of debility and sent to the hospital for 5 days, then put on light duty in camp for 4 days and then sent to the mine; after 5 days attempted mine work he was put on camp and surface work; on 8 February 1945 put on work in the mine; during this time he complained of weakness. On 17 February 1945 he became ill with diarrhea and later showed signs of dysentery, by 24 February 1945 lost control of his bowels but not placed on camp work until 26 February 1945; at noon on 26 February 1945 taken off work and allowed to lie down; found dead in bed at 0700 27 February (Ex. 17, p 39). When Marshall was discharged from the hospital he was put to work in the camp by the accused Inoue (R. 20). Inoue said at the time that it was his (Inoue's) instructions that he should put Marshall to work but the witness did not know who sent Marshall to work in the mine; camp work consisted of cleaning latrines, washing benches, gardening; the work was too much for Marshall (R. 39). PW states that Inoue ordered Marshall from the hospital to the billet (Ex. 32, p 4).

(20) As to Specification 2: PW Baker states that he and PW Burgess were ill in the hospital sometime in 1943 or 1944; that the accused Inoue stopped their food for five days; that during this time they lived on smuggled food. After the fifth day the regular food was resumed, but the accused examined each meal "and on some occasions took some off the plate because he said there was too much" (Ex. 24). PW Burgess states that he arrived in Japan about November 1942 (Singapore Maru arrived at this time.) and that about 12 months later (November 1943) PW Chapman and he were called to the camp office by the accused Inoue and informed that as long as they stayed in the hospital their food would consist only of "two bowls of Jap rice per day". The other PWs smuggled food to them to keep them alive (Ex. 21). Baker and Burgess were put on a diet of rice water by Inoue (Ex. 18, p 5). This rice water diet lasted one week as treatment for dysentery (Ex. 17, p 31).

(21) As to Specification 3: PW Chapman states that he was in the camp hospital from the time he arrived in camp until October 1944; that in April 1945 the accused Inoue ordered him out of bed and to work in the coal mine; that Inoue knew he had been in bed in the hospital for five months and was very weak. The next day he was helped to the mine where he collapsed and lay on the ground until he was carried back to camp by the other PWs. Several months later Dr. Fedder (PW Doctor) requested Inoue to allow him to have extra food, but the requests were always denied. At this time his rations were a small bowl of rice water three times a day (Ex. 13). Food was withheld from Chapman, but the affiant could not state that Inoue

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caused it (Ex. 3). Inoue reduced Chapman's rations to 3 bowls of rice water per day (Ex. 14). This reduction lasted for about one week (Ex. 18, p 4).

(22) As to Specification 4: PW Cowell stated that he was in the camp hospital with pneumonia about Christmas time 1943; that he was discharged while very weak; that PW De Banks (who had also been in the hospital with pneumonia) and he were paraded by the orders of Inoue and sent to work in the mine; De Banks collapsed before they got to the mine and was returned to camp; that he lasted about half a shift in the mine and collapsed and was returned to camp. Two days later Inoue again gave orders to have the same two returned to the mine, but when De Banks was carried to the parade in a stretcher and Cowell collapsed while standing in ranks he gave up and the two went to the hospital (Ex. 3). PW Deebank places the incident in January 1944, states that he got as far as the mine before he collapsed; the next day he was ordered to go again to the mine and collapsed just outside the camp and that after being in bed for about three weeks Inoue made him work in the mine pit for about a week after which he was put on light duty (Ex. 14). The PW senior officer places the incident on 12 February 1944 in a copy of a letter addressed by him to the camp commander at the time (Ex. 17, p 9).

(23) As to Specification 5: "There was a Japanese Sgt. named Yamana San who could speak English and who was employed as an interpreter in addition to his other duties. He had only one arm, his left, his right arm being lost in the China campaign, was married, one child and lived locally. This man was responsible for retaining Red Cross parcels and putting them to his own use. Sometimes he used a form of blackmail, suggesting that he would hand over the parcels provided he was given one for himself" (Ex. 22). The accused Okada and his staff misappropriated about 70% of the Red Cross supplies received about Christmas time 1943 (Ex. 17, p 7).

(24) As to Specification 6: The accused Inoue slapped PW Gordon in the face late in 1944; in 1945 he struck PW Floor on the face and put him in detention although he was told by the PW Doctor that Floor was ill and not mentally responsible. He struck Dr. Petrovsky in the face in the summer of 1945 (R. 24). The accused forced a British PW to work for several days over the protests of the PW Doctor in May 1945; in June or July 1945 the accused forced PW Bampton to work in the mine for three days while he was ill (R. 37). The only way the accused deprived PW of medical treatment was to put them to work when they needed rest (R. 40). The accused often hit the affiant (Cowell) and others and knocked them down (Ex. 3, 7). PW Lighting while recuperating from illness and on a special diet was ordered back to the mine on a normal diet and as a result returned to the hospital in a serious condition; PW Lawson sent to the mine with incipient pneumonia over protests of Camp PW doctor (Ex. 17, p 31). The accused Inoue struck the affiant (Smith) on more than one occasion (Ex. 19). The accused Inoue struck the affiant (Garner) on many occasions (Ex. 27). The accused and one other guard beat 12 PWs, including the affiant (McGonnell) with sticks towards the end of 1943 (Ex. 30). The accused Inoue slapped the affiant (Barker) early in 1945; the accused also slapped PWs for minor infractions of the rules (Ex. 31). Inoue struck PW Neale many times (Ex. 11) and PW Capt. Chapman once (Ex. 17, p 14).

(25) As to the additional Specification 1: See paragraph 3a (24) above.

b. For the defense:

(1) The accused Inoue, after being duly warned of his

(p 10, INOUE, Case #102)

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rights (R. 58), took the stand in his own defense. His testimony may be summarized as follows: that he joined the Japanese Army in 1936, was wounded in 1938 and discharged in 1939 after losing his right arm; he was hired on 1 February 1943 for duty at POW Branch Camp No. 7 (Camp No. 2) as an army gunzoku and assistant in handling PWs; he acted as OD two or three times each week; he never acted as a medical orderly and had no authority over medical orderlies; he did not have the authority to send sick PWs to work; he did not have any official duties in connection with Red Cross supplies; that mining company personnel were in charge of the hospital; the company provided one medical orderly; the camp commander was the immediate superior of the civilian medical orderly; the medical orderly or the doctor had authority to excuse sick PWs from work; the camp CO never overruled the medical personnel and neither did he; the Japanese Doctor recommended the type of work to be performed by the PWs and the orders as to work were issued by the camp CO; the mine did not require a certain number of PWs for work; denied ever placing a PW in confinement on his own order; stated that the camp CO was the only one who could order a PW into confinement; that Marshall (Sp. 1) was confined by order of the Camp Commander (Lt. Naomi); denied ordering Marshall to work; the Camp CO was the only one who could order a PW into or out of the hospital; the Camp Commander acted on the advice of the Doctor; PWs were worked in accordance with the advice of the camp doctor; he knew of no incident in which the camp commander overruled the advice of the doctor; he did not recall PWs Baker and Burgess (Sp 2); he had nothing to do with the distribution of food to PWs in the hospital; that he never gave instructions to change the food of PWs in the hospital; did not order a change in PW Chapman's food (Sp 3); that he ordered Chapman to work on the Doctor's orders; he had authority to parade the PWs (Sp 4) and that he paraded those PWs that had been declared physically fit by the medics; the camp CO was in charge of the distribution of Red Cross supplies (Sp 5); that he had no knowledge of the Camp CO withholding Red Cross supplies; he did not remember PW McConnell; he did strike (slap) PWs but never kicked or mistreated a PW; he did slap PW Gordon and Petrovsky and about 10 or 20 others; no medical aid was needed by the PWs after the slappings.

Cross-examination: When not OD he worked in the office or as an assistant in charge of PWs; he was not second-in-command of the camp at any time; the NCOs who were second-in-command represented the Camp CO but could not punish a PW without the permission of the Camp CO; no one was authorized to punish PWs without the permission of the Camp Commander; that he punished PWs without the consent of the Camp CO; by the ward doctor in his testimony he meant Japanese doctors; the medical orderlies (Japanese) sent men to work in accordance with the physical classification set up by the Japanese doctors; the Japanese doctor came to the camp two or three times a week; he never overruled the medical decisions of the orderlies or the Japanese doctor; when the Japanese doctor was not in camp the medical orderlies followed the recommendations of the PW doctors; PWs who had a complaint went directly to the Camp CO; and did not have to go through him; he knew of no complaint about his actions to the Camp CO; when Marshall went into a Japanese home and stole food he struck him three times with a stick; the slappings he did were without authority and of his own free will and accord.

Commission: He ordered PW Doebank to work against the advice of a PW Doctor because the Japanese doctor had classified Doebank as being capable of working; he did not order Doebank to work while awaiting results of an x-ray; maybe Japanese doctor did; Okada spent half a day in each camp; he was responsible for the administration branch of PW handling; never was in "General Affairs" branch; in general PWs went from the hospital to rest in barracks before working; he did not act as interpreter; did not know of Okada misappropriating Red Cross supplies; admitted making statement in writing that Okada "disposed the supply on their own accord",

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that is, a portion of the supplies.. Re-direct: Meant Okada took Red Cross supplies for his own benefit. Commission: Heard of the Red Cross supplies incident from a Japanese; he never saw anything in this respect himself (R. 58-78).

(2) The accused Okada, after being duly warned of his rights (R. 78), took the stand in his own defense. A summary of his testimony follows: He had sixteen years of schooling; was in the army from April 1940 to September 1945; he was CO of Camp 5 from 27 November 1942 to 10 March 1945 and of Camp 2 from September 1943 to mid-July 1944; the camps were about 5 kilometers apart; PWs at both camps were employed in mining operations; all medical needs furnished by the company; he had authority to instruct the medics how to treat PWs; he did not interfere with the medical treatment prescribed by the medical authorities; his approval was necessary to get a PW into the hospital; he never refused permission; he had the authority to discharge a PW from the hospital; he could not fire the company medical personnel; the Japanese doctor visited the Camp every day and the company medical orderly was present every day; denied misappropriating Red Cross supplies or of knowing of any such actions; denied knowing of the Charles incident (Sp 3a); the Fisher incident (Sp 3b); the Kimber incident (Sp 3c); the Dorsett, Klerks, Hulsey incident (Sp 3e); the Mayfield incident (Sp 3f); the Lewis incident (Sp 3g); the Bradsworth et al incident (Sp 3h); the Nairne, Pordae incident (Sp 3i); his permission was not necessary to put a PW in jail; Sgt. Taniguchi did not have the power to send a PW to work without the concurrence of the medical orderly (Sp 3b); he never instructed or permitted the Japanese personnel of his camp to mistreat PWs; he merely acted as the representative of the Main Camp Commander (Fukuoka Main Camp) while he was in command of Dispatch Camps 2 and 5; denied having any knowledge of the Cowell-Deebank incident (Sp 6a); admitted having heard of mistreatment of PWs by members of the Camp 2 personnel; denied knowledge of the Petrovsky incident, the Gordon incident or the McGonnel incident (added Sp 1a). Cross-examination: He did not receive any instructions in running a PW camp; he did some studying after he was appointed a camp commander; PWs were to be handled humanely, and not mistreated or embarrassed; PWs who disobeyed instructions could be put in the guardhouse by the camp CO; the investigations of alleged wrongdoing on the part of PWs were made by him; in three cases he ordered the PW to the guardhouse after an investigation; one for 3 days, one for 5 days and one for a week; he could not hire or fire the camp medical personnel but he could have fired the accused Inoue; the OD in the camp when the CO was absent had the power to send PWs to work and to put PWs in the guardhouse, subject to his (the Camp CO's) approval when he returned; there was no authority to withhold food as a punishment; he inspected each camp once a day; received a complaint from Major Allpass about the mistreatment of PWs (Camp 5); he called in the individual charged with the slapping and reprimanded him; he could have resigned his commission if he had been dissatisfied with his job as camp commander; Commission: He had the authority to withhold the issuance of Red Cross food parcels until in his judgment it was proper to issue them; he never heard or knew of any Red Cross supply shortage; Inoue did not attempt to get Red Cross parcels for personal use; did not remember receiving a letter from Major Allpass about Red Cross supplies; Red Cross clothing was issued by one of his NCO's who in turn acted under instructions of the main camp; if clothing was received and not issued at once it was because it was not needed until a later date; the main camp ordered that Red Cross supplies be issued as soon as possible or needed; the main office of the camp always followed the Japanese doctor's advice on sending PWs to work; he had the mining company fire a work supervisor mistreating PWs; Re-direct: Identified defense exhibits A, B, C, and D as pictures of a Christmas party at Camp 2 in 1943;

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Re-Cross: The company paid for the party; in 1944 held a Christmas party at Camp 5: the company paid for this also; he never had a complaint about the accused Inoue beating PWs (R. 78-111).

(3) Yasuo Uiki, a defense witness, testified in brief that he had been the Japanese doctor in Camp 2 from March 1944 until the end of the war, that he visited the camp on the average twice a week and that the accused Okada always followed his recommendations; he did not know if Inoue followed his recommendations or not; he had the final say as to who would work and he did not know anyone who could overrule his decision; in general he followed Doctor Feder's opinions; he never heard of a sick PW being released from the hospital without his permission (R. 111-116).

(4) Yutska Shimuzu, a witness for the defense, testified in brief that he was medical orderly at Camp 2 during the years 1943 and 1944; that he was present for duty every day during those years and that neither Okada or Inoue ever overruled his instructions as to the treatment of the sick; that he never made any decision as to which PWs would work and which would go to the hospital (R. 116-117).

(5) Taro Kunishige, a witness for the defense, testified in brief that he had been the Japanese Doctor at Camp 5 from December 1942 to July 1945; that at first he visited the camp every day, later two or three times a week and that his assistant went every day; that Okada never overruled any of his decisions on sick PWs; that his was the final word as to what PWs worked and that the army did not have the final say; his assistant did not have a medical degree but had performed as a surgical assistant for 20 years; sick call was whenever he could get to the camp--sometimes in the morning--sometimes as late as 2000; he released PWs from the hospital on his own authority; he did not have to get anyone's permission; he knew nothing about sick PWs being forced to work; never had any complaints from the PW Doctors (R. 117-123).

(6) Osamu Nomi, a witness for the defense, testified in brief that he became camp CO of Camp 2 after the accused Okada left; that he issued orders for the confinement of Marshall; that Doctors Uiki and Feder advised a few days rest after his release; that after the rest Marshall was again examined by Feder and sent to work outside the mine; that he left the camp on 4 February 1945 and Marshall was still doing light work; Inoue had no connection with the orders for imprisonment of Marshall; Inoue did not have authority to send PWs to work against the advice of the Doctors and did not do so; identified Defense Exhibits E, F and G as pictures of a Christmas party in 1944 of PWs at Camp 2; Inoue did not have authority to beat PWs and did not do so as far as he knew; Inoue did not have authority to order PWs to be confined; nor did he ever do so on his own authority; he never heard of Inoue beating PWs Baker, Burgess, or Chapman; if PWs had been beaten he would have known about it; he never had to reprimand Inoue; that on the recommendation of the Doctors he sent Marshall back to work; it is not a custom in the Japanese Army to beat individuals confined in the guardhouse; Marshall was given light work near the mine but not in the mine; his condition seemed normal in January 1945; Marshall was released from confinement on 3 January 1945 (R. 123-130).

(7) Hitoshi Fujii, a defense witness, testified in brief that he had been in charge of food distribution of Camp 2 during 1943 and 1944 and that neither Okada or Inoue had ever interfered with the food distribution, that the food was plentiful and the PWs healthy (R. 123-132).

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(8) Tsisuke Kanaya, a witness for the defense, testified in brief that he was chief of the personnel section of the mining company and that he talked with Okada about the handling of the PWs of Camp 2 and that Okada gave instructions that the PWs should not be mistreated; that when Okada asked for food the company got more when it could (R. 132-133).

(9) Koiji Nita duplicated the testimony of Kanaya as to Camp 5 (R. 133-135).

(10) The defense read into the record a letter to Okada from the PWs at Camp Oniya dated 18 August 1945 complimenting Okada on his fine treatment of them (R. 136).

(11) The affidavit of Maj. Allpass (senior PW at Camp 5) states in part, "It must be realized that the standard of physical comfort, i.e., living accommodation, food, and medical arrangements, were low according to our standards. They were consistent with the appalling poverty of the surrounding Japanese and Korean workers" (Ex. 35, p E). Further, Dr. Petrovsky stated that the general rule was that all convalescent PWs were allowed a few days in camp doing nothing after release from the hospital (R. 27). Also Lt. James (PW liaison officer, Camp 2) stated, "Although Lieut. Okada was a man of weak character, a liar and a thief, and easily influenced by his subordinates; in fairness to him it must be added that he himself was never brutal, and that it is probable that much of the mental distress which was caused to the POW personnel was due to the actions of his subordinates, especially Inoue (ono-ann), and without his knowledge" (Ex. 17, p 8).

4. Errors and Irregularities:

a. There are no errors or irregularities which injuriously affect any substantial rights of the accused. The Commission was constituted by proper authority and had jurisdiction of the accused and of the offenses alleged. There is no evidence that the accused were not sane at the time of the commission of the alleged acts or at the time of the trial. The accused were given a fair trial, were ably defended, cooperated in their own defense, produced witnesses in their own behalf, took the witness stand in their own defense, and were given ample opportunity for cross-examination of the witness who appeared against them.

b. It is noted that the Commission granted a motion of the prosecution to change the first specification against Inoue from alleging wrongful imprisonment and starvation of PW Marshall, thus contributing to his death, to forcing the same individual to perform arduous labor thereby contributing to his death. There is no positive showing that such a motion was by direction of the appointing authority nor does the record show that the defense was reminded that they could ask for a continuance as the action of the Commission was in effect the adding of a new specification to the charge. However, the specification was changed prior to arraignment, and the defense waived objections to the action of the prosecution and pleaded to the specification (R. 3, 17). Under the circumstances the action of the Commission in allowing the change in the specification can not be said to have adversely affected the rights of the accused Inoue.

c. The rulings of the Commission on the various special pleas (R. 3-16) and on motions and objections during the trial were not of such a nature as to impair the legal rights of the accused, with the exception of the statement of the President-Law Member

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appearing on page 64 of the record. In referring to the charge of forcing PWs to work at arduous labor while sick and ill, the President stated, "I think the essential element is the condition of the prisoners" and stated further that no proof would be required as to the type of work performed. This is clearly an erroneous conception of the elements of proof of the specification. The prosecution pointed out to the Commission that some work might be beneficial and other types of work impair the health of the PWs, but the President declined to listen to oral evidence as to work performed. It is a medical fact well known to the average man that at a certain time during the convalescence of a sick person certain types of work may be of great value and make recovery more rapid. The effect of the statement of the President-Law Member was to rule that the accused might be found guilty if it appeared that sick PWs were worked regardless of what the work was, although the prosecution affidavits have many statements as to the type of work performed by sick PWs. The defense was stopped by this ruling from presenting evidence in favor of the accused that might have overcome the positive evidence in the affidavits. A conviction based upon such a conception of the law should not be sustained.

5. Opinion:

The record is legally sufficient to sustain the findings of the Commission except as hereinafter indicated.

a. INOUE:

(1) As to Specification 1: The finding of guilty should not be approved (See par 4c above).

(2) As to Specification 2: The finding of guilty should not be approved. The original specification charged the alleged wrongful acts occurred "in or about April 1943" and the Commission found the accused guilty of the offense "between April 1943 and October 1944", thus changing the time of the commission of the alleged acts to an unknown period in the 18 months following April 1943. Subparagraph 5b(1), Letter SCAP, dated 5 December 1945, Subject, "Regulations Governing the Trials of Accused War Criminals" provides that the accused is entitled to a specification that clearly apprises the accused of the offenses charged. The accused defended against a specification alleging a wrongful act about April 1943. He was found guilty of doing the act sometime in the next year and a half. In depriving the accused of the rights guaranteed by SCAP and the practice of civilized nations the Commission exceeded its authority, and the finding of guilty should not be approved.

(3) As to Specification 3: The finding of guilty should not be approved. The finding of guilty of the allegation concerning the performance of arduous labor should be disapproved for the reasons stated in 4c above. The evidence supporting the allegation concerning the withholding of food indicates that if such action was taken by the accused it was done "several months" after April 1943, possibly in 1944, and was in no way connected with the allegation concerning the arduous labor (Ex. 3). The Commission attempted to mend this variance between the specification and the proof by changing the original time alleged, i.e., "in or about April 1943" to "between April 1943 and October 1944". Such action in extending by some 18 months the period in which the alleged crime took place was beyond the power of the Commission, and was in effect an attempt to find the accused guilty of an offense not charged against him. Some latitude should be extended in War Crimes cases as to proof of allegations, but no attempt was made during the trial to amend the specification to conform to the proof and the action of the Commission as evidenced by their findings prejudiced the basic rights of the accused (See 5a(2) above).

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(4) As to Specification 4: The finding of guilty should be approved excepting the words "and work at arduous labor". The excepted words should be stricken for the reasons indicated in par 4c above.

(5) As to Specification 5: The finding of guilty should be approved, as all of the necessary allegations were proven by affidavits of PWs who were present at the time and place alleged acts took place.

(6) As to Specification 6: The finding of guilty should be approved excepting the words "by forcing them to perform arduous labor when they were physically unfit to do so". Besides the reasons for excluding the excepted words advanced in par 4c above, it appears that the allegation is included within the broader allegation of "refusing to provide them with proper medical treatment". Working sick or infirm PWs deprives them of rest; this rest may be considered "medical treatment", and proof of such working of PWs substantiates a finding of guilty of refusing medical treatment.

(7) As to Added Specification 1: The finding of guilty of this specification should not be approved for the reason that the allegations therein are included within Specification 6 above (par 5a(6)). Specification 6 is an omnibus specification and charges miscellaneous mistreatment and abuse of PWs "other than as hereinabove specified", the quoted words referring to Specifications 1 to 5 inclusive of the same document which was dated 8 August 1947. The added specification is dated 7 November 1947; no request was made prior to trial for a renumbering of the specifications so that the added specification could be inserted above the omnibus. The effect of the action of the prosecution is to multiply the specifications against the accused, and to charge two specifications that could be proven by the same evidence, i.e., the alleged mistreatment of PW McConnell.

b. OKADA:

(1) The findings of guilty of Specifications 2, 3a, 3b, 3c, 3e, 3f, 3h, 3j, 4 and 5 should be approved. The necessary proof was presented by the prosecution both by oral evidence and affidavits of PWs who were present at the times and places alleged and knew the facts.

(2) As to Specification 1: The finding of guilty of this specification should not be approved. A careful survey of the evidence presented by the prosecution fails to show a criminal responsibility for the conditions as alleged. On the contrary the evidence tends to prove the camp normal in every respect as to clothing; medical treatment, etc. Major Allpass, the senior PW at the camp, epitomized the situation when he said, "They [the living conditions] were consistent with the appalling poverty of the surrounding Japanese and Korean workers" (par 3b(11)). The statements of Lt. James and Capt. Petrovsky, men capable of seeing the camp in an unprejudiced manner, apparently support this view (par 3b(11)).

(3) As to Specification 3g: The finding of guilty should be approved excepting the words "and by forcing him to work at arduous labor". (See par 4c above).

(4) As to Specification 3i: The findings of guilty should be approved excepting the words "and Moss Orderly Charles Frederick Pordoe". The evidence offered by the two PWs concerned indicated that Nairne was beaten, but fail to state that Pordoe was mistreated at this time.

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(5) As to Specification 6a: The finding of guilty should be approved excepting the words "and work at arduous labor" for the reasons advanced in paragraph 4c above.

(6) As to Specification 6d: The findings of guilty should be approved excepting the words and figures "20 July 1944", substituting therefor the words "1 July 1944". The use of the terminology "between" certain dates limits the time to the period indicated between the terminal dates (5 Words and Phrases, 401-402) and there was no attempt during the trial to amend the Specifications to conform to the proof. The accused defended against the specification as alleged, and the action of the Commission in effect found the defendant guilty of an offense other than that alleged.

(7) As to added Specification 1a: The finding of guilty should be disapproved (See par 5a(7) above).

6. Recommendations:

Requests for clemency have been submitted on behalf of the accused Inoue and have been carefully considered.

As to the accused Inoue it is recommended that the findings of the Commission, with the exceptions noted in paragraphs 5a(1), (2), (3), (4), (6), and (7) be approved. While the accused Inoue has only been found guilty of three specifications the evidence presented at the trial indicates that the accused enjoyed the mistreatment of the PW, under his care, and, considering the circumstances, the sentence to 8 years confinement at hard labor is not excessive, and should be approved. Due to the length of time the accused has been in confinement it is further recommended that two years and $\frac{1}{2}$ month of the confinement at hard labor be remitted.

As to the accused Okada it is recommended that the findings of the Commission be approved with the exceptions noted in paragraphs 5b(2), (3), (4), (5), and (6). In view of the position of the accused as Camp Commander the sentence to four years confinement at hard labor is not excessive and should be approved, and in consonance with the present policy, due to the length of time the accused has been in confinement, it is further recommended that one year and eleven months of the confinement at hard labor be remitted.

7. Action:

Forms of action designed to carry these recommendations into effect are attached.

W. L. FIELD
Lt Col JAGD
Reviewer

I concur in general. However, as to Okada, Specification 6d, - the substitution of "20 July" for "1 July" is a very slight enlargement of the 11 months' period pleaded and is considered an immaterial variance under the facts in this case. Specification 2, Okada, is further established at R 77.

ALLAN R. BROWNE
Lt. Col: JAGD
Army Judge Advocate

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